

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

TECK METALS, LTD.,

Plaintiff,

vs.

CERTAIN UNDERWRITERS AT
LLOYD'S, LONDON AND
CERTAIN LONDON MARKET
INSURANCE COMPANIES,

Defendants.

No. CV-05-411-LRS

**ORDER DENYING
MOTIONS TO STRIKE
AND TO VACATE OR
AMEND**

BEFORE THE COURT are the Defendants' Motion To Strike (Ct. Rec. 304) and Motion To Vacate Or Amend Order Granting Permanent Anti-Anti-Suit Injunction (Ct. Rec. 307). These motions are heard without oral argument.

MOTION TO STRIKE

Through their participation at the December 2, 2009 hearing, and in their written materials submitted in conjunction with their motion to strike and motion to vacate or amend, the Defendants have had an adequate opportunity to respond, and/or have responded, to the points argued by Plaintiff's counsel at the December 2 hearing; to Plaintiff's post-hearing brief filed on December 7 (Ct. Rec. 302); and

**ORDER DENYING MOTIONS TO
STRIKE AND TO VACATE OR AMEND- 1**

1 to Plaintiff's post-hearing status report (Ct. Rec. 301) filed on December 7.

2 Accordingly, since Defendants have not been prejudiced, their Motion To
3 Strike (Ct. Rec. 304) is **DENIED**.

4
5 **MOTION TO VACATE OR AMEND**

6 The "Findings of Fact" and "Conclusions of Law" contained in the court's
7 "Order Granting Permanent Anti-Anti-Suit Injunction" (Ct. Rec. 298) are accurate.
8 If there is an appeal of the court's order, the transcript of the December 2 hearing
9 will likely constitute a part of record, and the parties can present whatever
10 additional "facts" they deem appropriate for consideration by the court of appeals.

11 The court's order is "permanent" with regard to the anti-anti-suit relief
12 awarded to Plaintiff which prohibits Defendants from seeking an injunction in
13 another court to preclude Plaintiff from prosecuting the captioned action. The
14 court recognizes the order is interlocutory in the broader sense that the court has
15 yet to rule on the merits of the parties' dispute.

16 The court's order "enjoins," that is "directs," Defendants to inform the
17 British Columbia Court that Defendants are no longer proceeding with their
18 application for an anti-suit injunction in that court.¹ While it seems it would be
19 obvious to the British Columbia Court why Defendants are no longer proceeding
20 with their application for an anti-suit injunction, nothing in this court's order
21 precludes Defendants from advising the British Columbia Court why they are no
22 longer proceeding with their application.

23 This court's order is not "overbroad, open-ended, and unlimited in time and
24

25
26 ¹ The order does not direct Defendants to actually "withdraw" the
application.

1 scope.” Because the reason for the court’s order is to preserve its jurisdiction
2 (which it previously found to be proper), the order appropriately precludes
3 Defendants from pursuing anti-suit relief not only in the courts of British
4 Columbia, but in “any other court.” This court’s anti-anti-suit injunction is
5 permanent because it will remain in place until the merits of the parties’ dispute is
6 fully and finally adjudicated in this court.²

7 This court will not amend its order to include any of the “Additional
8 Proposed Findings” submitted by Defendants. This court has made the findings
9 which it deems sufficient to support its order. If an appeal is pursued by
10 Defendants, their “Additional Proposed Findings” can be tendered to the court of
11 appeals by way of argument.

12 This court did not commit a “clear error” in granting anti-anti-suit relief to
13 Plaintiff, and this relief does not create a “manifest injustice” to Defendants.
14 Accordingly, the court will not reconsider its order.

15 Defendants’ Motion To Vacate Or Amend (Ct. Rec. 307) is **DENIED**.

16 **IT IS SO ORDERED.** The District Executive is directed to enter this order
17 and forward copies to counsel.

18 **DATED** this 19th of January, 2010.

19
20 *s/Lonny R. Suko*

21 LONNY R. SUKO
22 Chief United States District Judge
23

24 ² It is not this court’s intention to adjudicate any coverage dispute with
25 regard to Pinchi Lake which is located in Canada. The coverage dispute at issue
26 in the captioned matter pertains to Lake Roosevelt which is located within the
27 exterior boundaries of the State of Washington.